

### **Remarks**

As set forth below, Applicant submits that the claimed invention is allowable over the cited references because the rejections are based on prior art that teaches away and that fails to provide correspondence to the claimed invention.

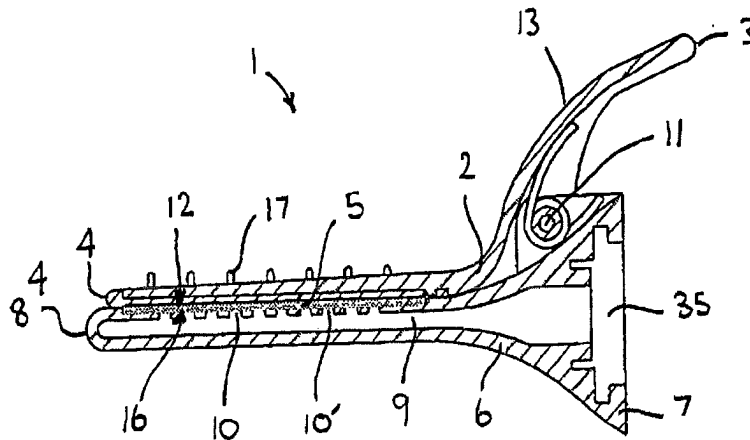
The final Office Action dated August 20, 2007 indicates an objection to claim 8 due to an informality and lists the following rejections: claims 1, 2, 6-8 and 10 stand rejected under 35 U.S.C. § 103(a) over Lu (U.S. Pub. No. 2003/0131864) in view of Duqueroie (U.S. Patent Pub. 2001/0042553), and claims 1-10 stand rejected under 35 U.S.C. § 103(a) over Mehringer *et al.* (U.S. Pat. 5,333,627) in view of Harlan *et al.* (U.S. Pat. 5,289,835) and in further view of Duqueroie.

Regarding the objection to claim 8, Applicant has amended the claim as indicated on page 4 of this paper in a manner consistent with that suggested by the Examiner. Thus, Applicant requests that the objection to claim 8 be removed.

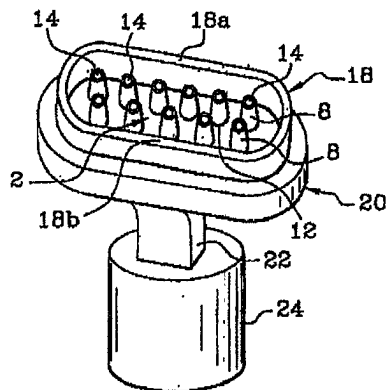
Applicant respectfully traverses the Section 103(a) rejection of claims 1, 2, 6-8 and 10 because the modification of the Lu reference proposed by the Examiner would render Lu inoperable and therefore Lu teaches away from such a modification. According to M.P.E.P. § 2143.01, if a “proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.” *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984). The Examiner acknowledges that Lu does not teach or suggest the claim limitations directed to a depression that surrounds the additive outlets to collect residual additive. Furthermore, the Examiner fails to consider that the purpose of Lu’s teachings is directly contrary to use of an applicator head with a depression surrounding the additive outlets. The Examiner proposes to provide a depression around Lu’s apertures 10 (*see, e.g.*, Figure 1) in order to form a drip tray to collect excess product as taught by Duqueroie (*see, e.g.*, Figure 1). However, the Examiner has provided no detail regarding how to make such a combination or how this combination would function. Duqueroie’s Figure 1 shows a peripheral wall 18 that forms the drip tray, adding such a wall to the surface of Lu’s body member 6 would prevent the treatment surfaces of the body members (2 and 6) from being able to be brought together and this wall would also block the hair

from being able to be moved between the two treatment surfaces (*see, e.g.*, Figure 1 and Paragraph 0049). Thus, the addition of the drip tray taught by Duqueroie would render Lu unfit for its intended purpose.

To illustrate the impropriety of the Examiner's proposed combination of embodiments, these embodiments are reproduced below.



**Lu's Figure 1**



**Duqueroie's Figure 1**

The Examiner's proposed combination would result in Duqueroie's wall 18 being placed on the treatment surface 16 of Lu's body member 6 surrounding the apertures 10. Such a combination would prevent the two treatment surfaces (12 and 16) from being brought together and the added wall would also block the hair from being readily introduced at the (left) end between the two treatment surfaces.

In the event that the Examiner is proposing to modify Lu to have a depression that extends into Lu's fluid passage 9 (which is not taught by either reference), Applicant

submits that such a depression would obstruct the flow of treatment fluid to Lu's apertures 10, rendering Lu unfit for its intended purpose of distributing the treatment fluid. *See, e.g.*, Figure 1 and Paragraph 0049.

In view of the above, one of skill in the art would not be motivated to modify Lu as proposed by the Examiner. Accordingly, the Section 103(a) rejection of claims 1, 2, 6-8 and 10 is improper and Applicant requests that it be withdrawn.

Applicant further traverses the Section 103(a) rejection of claims 6 and 7 because the Examiner fails to present any correspondence between the Lu reference and these claims. More specifically, claims 6 and 7 depend from claim 3, which are not part of the rejected claims over Lu in view of Duqueroie. Thus, the Examiner has improperly rejected claims 6 and 7 without accounting for the limitations of claim 3. Therefore, this Section 103(a) rejection of claims 6 and 7 is improper at least in view of claim 3, and Applicant requests that it be withdrawn.

Applicant respectfully traverses the Section 103(a) rejection of claims 1-10 based upon the Mehringer reference because the Examiner once again proposes a combination that teaches away. Applicant submits that the modification of the Mehringer reference proposed by the Examiner defeats two stated purposes of Mehringer. The Examiner acknowledges that Mehringer does not teach or suggest the claim limitations directed to a depression that surrounds the additive outlets to collect residual additive. Furthermore, the Examiner fails to consider that the purposes of Mehringer's teachings are directly contrary to use of a dispenser head with a depression surrounding the additive outlets. More specifically, the Examiner proposes to combine Duqueroie's drip tray with Mehringer in order to collect excess product. However, the dual stated purposes of the Mehringer reference are to obtain an adequate distribution of products, without using any type of "wide-mouthed container" and without applying any product to "those locks of hair that are intended to be excluded." *See, e.g.*, Col. 1:32-38 and Col. 2:9-11. Applicant submits that the addition of a drip tray that collects excess product to Mehringer's lower dispenser section 9 would result in a wide-mouthed container and would cause this collected excess product to be applied to locks of hair outside of the intended application area (*i.e.*, locks that are intended to be excluded). Moreover, Mehringer discusses the desirability of minimizing the amount of time that the product is exposed to air prior to being applied to

hair. *See, e.g.*, Col. 1:38-44 and Col. 2:12-18. Applicant submits that any product that collects in the proposed drip tray would be exposed to air for a period of time that would render the collected product unfit for use. Thus, this excess product should not be applied to the hair, which is what the proposed modification of Mehringer would result in as discussed above.

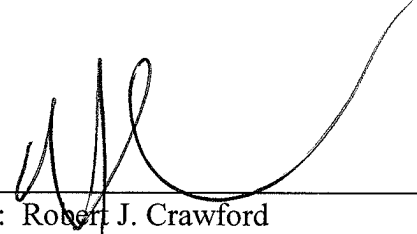
In view of the above, the proposed modification of Mehringer would defeat stated purposes of the Mehringer reference, thus, there is no motivation for one of skill in the art to make such a modification. Accordingly, the Section 103(a) rejection of claims 1-10 based upon the Mehringer reference is improper and Applicant requests that it be withdrawn.

Applicant further traverses the Section 103(a) rejection of claims 2 and 8-10 (based upon the Mehringer, Harlan and Duqueroie references) because the cited portions of these references fail to correspond to the claimed invention which includes, for example, aspects directed to the container being detachable from the electric device. The cited portions of the Mehringer reference do not teach that the container 3 can be detached from the syringe 1. *See, e.g.*, Figures 1 and 4; Col. 3:35 to Col. 4:13. The cited portions of the Harlan reference also do not teach that the tube 20 can be detached from the hair coloring brush depicted in Figure 5. *See, e.g.*, Figure 5; Col. 4:22-24. Therefore, the Section 103(a) rejection of claims 2 and 8-10 based upon these references is improper and Applicant requests that it be withdrawn. Applicant notes that claim 2 has been rewritten to be in independent form (*i.e.*, to incorporate the limitations of claim 1). Applicant submits that this amendment places the rejected claims in better form for consideration on appeal in that the amendment places claim 2 in condition for allowance over the cited references. *See, e.g.*, M.P.E.P. § 714.13. Thus, Applicant respectfully requests that the amendment be entered.

In view of the remarks above, Applicant believes that each of the rejections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the attorney overseeing the application file, Adam Stroud, of Philips Corporation at (408) 904-3618.

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